

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO.
03-10362-PBS

UNITED STATES OF AMERICA

v.

FABIAN RUIZ

**MEMORANDUM OF DECISION AND ORDER ON
MOTION IN SUPPORT OF REQUEST TO
RELEASE RUIZ TO THIRD PARTY CUSTODIANS**

January 23, 2004

DEIN, M.J.

This matter is before the court on the “Motion in Support of Request to Release Ruiz to Third Party Custodians” (Docket #41). Therein, defendant’s family members have offered to serve as third party custodians and “to augment, assist or provide support to Sophia Arvizu, Ruiz’ grandmother, who has been interviewed by Pre-trial Services as a third party custodian.” After careful review of the record in this case, as well as the supplemental material filed with the instant motion, the Motion to Release is DENIED.

Assuming, arguendo, that this new information was not available to the defendant, Fabian Ruiz (“Ruiz”), at his detention hearing, it still does not affect this court’s fundamental conclusion that “the government has proven by clear and convincing evidence that there are no conditions or combination of conditions which will reasonably assure the safety of other persons, and by a preponderance of the evidence that the defendant will fail to

appear.” See Memorandum of Decision and Order on Government’s Motion for Detention dated November 7, 2003 (“Detention Order”) at 6-7.

As detailed in the Detention Order, Ruiz has been identified as a large scale marijuana dealer. This court concluded that conditions of release were not appropriate here in large part because, while traveling from Tucson to Massachusetts to consummate the sale of 376 pounds of marijuana, defendant Ruiz stopped in Arkansas long enough for him to plead guilty to a charge of possession with intent to deliver marijuana, and to receive a sentence of 15 years of imprisonment, with 9 years suspended. He was to start serving his sentence at boot camp on January 23, 2004. The fact that the defendant was about to begin a 15 year sentence for drug dealing apparently did not deter him from continuing his drug business. Moreover, the defendant’s family, while close-knit, did not appear to exert sufficient control over him to insure that he complied with conditions of release. Thus, this court concluded that no condition or combination of conditions would reasonably assure the safety of the community. Nothing proffered by the defendant in his Motion for Release has altered this court’s conclusion.

Similarly, the risk of flight remains very high. As this court concluded previously, Ruiz faces a lengthy period of incarceration in Arkansas, even ignoring any sentence he may receive here. Since this court’s original Detention Order, the government in Arkansas has moved to revoke the suspended portion of Ruiz’ sentence because of his arrest here, rendering the risk of flight even higher. Other factors considered by the court remain unchanged. Thus, Ruiz does not appear to have stable employment apart from drug-related activities, he has significant contacts in Mexico, and the evidence against him in

the instant case remains strong. Under such circumstances, conditions of release are not appropriate.

For the reasons detailed herein and in this court's original Detention Order, the "Motion in Support of Request to Release Ruiz to Third Party Custodians" (Docket #41) is DENIED.

/ s / Judith Gail Dein
Judith Gail Dein
United States Magistrate Judge